IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Crl.Rev.Pet.No. 2042 of 2007()

AGAINST JUDGMENT DT 20.11.06 IN CRA.229/2004
ST.13676/2000 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM

.....

REVN. PETITIONER: APPELLANT/ACCUSED

T.V.PADMAKSHAN, AGED 42 YEARS,
S/O PADMANABHAN MASTER,C/O NARAYANAN NAMPOTHIRIPAD
KALLUMANA, AMBALAVATTOM, POST EDARIKODE,
TIRUR TALUK(KOTTAKAL POLICE STATION LIMITS)

BY ADV. SRI.T.K.SAIDALIKUTTY
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

RESPONDENTS: COMPLAINANT

---

1. KUNHEEN, MANAGING PARTNER,
POTTANIKKAL RUBBER INDUSTRIES,
PUTHUPPARAMBU, EDARIKODE.

2. THE STATE REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

.....

Crl.R.P. No. 2042 of 2007

.....

Dated: 20-06-2007

O R D E R

In this Revision filed under Sec. 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T.No. 13676/2000 on the file of the J.F.C.M., Malappuram challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner made the following submissions before me:

The accused was working as a Manager in the Rubber Industries of the complainant . For transacting business on behalf of the establishment the accused had opened an account in the Changuvetty branch of Canara Bank as directed by the complainant. He used to keep his signed bl;ank cheques in the establishment. Subsequently due to certain trade union problems in the establishment, the services of the accused were terminated

by the complainant and the accused was not permitted to enter the premises of the undertaking. While so, it was by misusing the blank cheque kept by the accused in the office of the complainant that the present complaint was filed. Ext.P10 (a) maintained by the complainant in the usual course of business will clearly show that a sum of Rs. 2,50,000/- which is the amount covered by the cheque was received by the complainant from V.K. Chappals. If so, the case of the complainant that the cheque amount represents the amount received by the accused from V.K. Chappals is false. The conviction entered against the revision petitioner is thus unsustainable.

4. I am afraid that I cannot agree with the above submissions. The complainant examined as P.W.1 has clearly deposed that the accused was a staff in the complainant's institution and was employed as a collection agent. Pottanickal Rubber Industries which is the establishment of the complainant used to send Nova Hawaii Chappals to V.K. Chappal Company at Vijayawada. As an agent of the complainant the accused went to Vijayawada and received Rs. 2,50,000/- from V.K.Chappals as advance for the supply of Hawaii Chappals. This was concealed by the accused from the complainant. When the complainant subsequently found out the impropriety committed by the accused the latter confessed his guilt and issued Ext.P4 cheque dated 29-11-1999 for the said amount. However,

Ext.P10 (a) entry was made by the complainant owning up the amount received from V.K. Chappals, Vijayawada. That does not in any way advance the defence. Both the courts below have considered and rejected the defence set up by the revision petitioner while entering the above finding regarding the guilt of the petitioner. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

This Revision which is devoid of any merit is accordingly dismissed confirming the conviction entered and the sentence passed against the Revision Petitioner.

V. RAMKUMAR, JUDGE.

ani/